

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

IN RE:

MARK ALAN MACAL and  
KAREN SUE MACAL,

No. 09-32944  
Chapter 13 Case

Debtors.

**NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM STAY**

To: The debtors and other entities specified in Local Rule 9013-3.

1. GE Money Bank, by its attorneys, Brooks & Trinrud, P.C., moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 1:30 P.M. on December 2, 2009 in Courtroom No. 2B, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than November 27, 2009, which is three days before the time set for the hearing (excluding Saturdays and Sundays, and holidays), or filed and served by mail not later than November 20, 2009, which is seven days before the time set for the hearing (excluding Saturdays and Sundays, and holidays).  
UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over the motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bank. P 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on April 30, 2009. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362(d) and Fed. R. Bankr P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. GE Money Bank requests relief with respect to a 2008 Bombardier Outlander ATV.

6. On or about, October 16, 2007, the debtor, Mark Macal, completed a BRP Consumer Application (hereinafter the “Contract”) and obtained credit with GE. (See attached Exhibit A).

7. On or about, October 16, 2007, the debtor, Mark Macal, used the GE credit to purchase a 2008 Bombardier Outlander ATV. (See attached Exhibit B).

8. As security for performance of the terms of the contract, the debtor, Mark Macal, granted a security interest in a 2008 Bombardier Outlander ATV, Identification Number 3JBKCKJ118J000093.

9. The GE Money Bank perfected its first security interest by filing a UCC Financing Statement for the collateral. (See attached Exhibit C).

10. Pursuant to the Contract, the debtor, Mark Macal, agreed to make monthly payments of principal and interest until the loan was paid in full.

11. The outstanding payoff balance under the contract as of November 3, 2009 was \$14,077.94. The last payment received was on November 24, 2008. The amount past due is in excess of \$1,210.00.

12. The Debtors’ Chapter 13 Plan fails to provide for payments to GE Money Bank for the 2008 Bombardier Outlander ATV.

13. Pursuant to 11 U.S.C. 362 (d) GE Money Bank is not adequately protected and relief from the automatic stay is appropriate in that the interests of GE Money Bank would be

irreparably harmed by continuation of the stay.

14. That the provisions of Bankruptcy Rule 4001(a)(3) should be waived.

WHEREFORE, GE Money Bank moves the court for an order pursuant to 11 U.S.C. §362(d) to terminate the automatic stay so that GE Money Bank can seek the return of said property or, in the alternative, pursuant to 11 U.S.C. §363(e) condition and or prohibit the debtors from further use of the property as is necessary to provide adequate protection to GE Money Bank, that the provisions of Bankruptcy Rule 4001(a)(3) be waived and for such other relief as may be just and equitable.

Respectfully submitted,

/s/ Allison E. Walsh  
Minnesota Bar ID No. 0344904  
Brooks & Trinrud  
A Professional Corporation  
3725 Blackhawk Road, Suite 200  
Rock Island, IL 61201  
Telephone: (309) 786-4900  
Facsimile: (309) 786-4940  
**ATTORNEY FOR GE MONEY BANK**

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

**VERIFICATION**

I, Cynthia Vinson, Bankruptcy Specialist with GE Money Bank, named in the forgoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 3rd day of November 2009.

GE Money Bank,

By Cynthia Vinson

Subscribed to and sworn before me this  
3rd day of November 2009.

Susan Bailey  
Notary Public

**Susan Bailey**  
**Notary Public, DeKalb County, GA**  
**My Commission Expires December 13, 2009**

10-17-07; 1:11PM:TOUSLEY MOTOR SPORTS

651 555 5555

# 3 / 10



# BRP CONSUMER APPLICATION - BB/BRP

29115

PLEASE READ THE ATTACHED DISCLOSURES AND SIGN BELOW BEFORE SUBMITTING YOUR APPLICATION. APPLICATION MUST BE SIGNED.

## Applicant

Please print in CAPITAL LETTERS and avoid contact with the lines: S, M, I, T, H

First Name M I K M I K Last Name M I K

Mailing Address 23214 BIRCH ISLW APT #

Do You: ☒ Own ☐ Parents/Relative ☐ Rent ☐ Other

Years at Residence 10

City Rossmore State MD Zip 21001

Social Security Number 514168

If the above address is a PO Box, you must provide a street address for yourself or a contact person

City State Zip

Home Phone 101511-3212-515769

Birth Date 1/19/68

Your Employer UICOR How Long (Yrs.) 12 Total Annual Income \$710,000

Business Phone 7168-512769

E-Mail Address (optional) By providing an E-Mail address, I consent to receive E-Mail communications about my Account and authorize you to provide my E-Mail address to BRP so that I may receive such communications, offers and updates.

Nearest Relative Not Living With You: Name Address City State Zip Home Phone

For all residents, if you are applying for individual credit or joint credit with someone who is not your spouse, combine your and your spouse's financial information on this application form.

## Joint Applicant

First Name M I K Last Name M I K Relationship to Applicant

Mailing Address 23214 BIRCH ISLW APT #

Years at Residence 10 ☐ Spouse ☐ Other

City State Zip

Social Security Number

Home Phone Birth Date 1/19/68

Month Day Year

Your Employer UICOR How Long (Yrs.) 12 Total Annual Income \$710,000

Business Phone 7168-512769

## PROTECT YOUR CREDIT CARD ACCOUNT WITH DEBT SECURITY - (OPTIONAL)

By signing to purchase Debt Security, I acknowledge that I do not need to purchase Debt Security to get credit. I have received and read the disclosures that are set forth below and in the Debt Security Summary attached. I agree that you may bill my Account a fee each month of \$0.99 per \$100 of the average daily balance of my Account as provided in the terms of the Debt Security agreement. I may cancel any time.

YES, I would like to purchase Debt Security. Sign Here to Enroll X

Debt Security is not available for residents of Alabama and Mississippi. Store associates who solicit applications for Debt Security must read the following disclosure to the customer:

1) Your purchase of Debt Security is optional. Whether or not you purchase Debt Security will not affect your application for credit or the terms of any existing credit agreement you have with us. 2) We will give you additional information before your first payment for Debt Security is due. This information will include a copy of the contract containing the terms of Debt Security. 3) There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under Debt Security. 4) You should carefully read our additional information for a full explanation of the terms of Debt Security.

I am providing the information in this application to GE Money Bank ("GEMB") and to dealers ("Dealers") that accept the BRP Credit Card ("Card") and to program sponsors, and asking GEMB to issue me a Card. By applying for this account, I authorize and agree that:

- GEMB may furnish this and other information about me (even if my application is denied) and my account to Dealers and program sponsors (and their respective affiliates) to create and update their records, and to provide me with service and special offers.

- GEMB may make inquiries it considers necessary (including requesting reports from consumer reporting agencies and other sources) in evaluating my application, and for purposes of reviewing, maintaining or collecting my account.

- If my application is approved, the BRP Card Agreement ("Agreement") will be sent to me and will govern my Account.

- Among other things, the Agreement: (1) INCLUDES AN ARBITRATION PROVISION THAT MAY LIMIT MY RIGHTS UNLESS I REJECT THAT PROVISION UNDER THE AGREEMENT'S INSTRUCTIONS; and (2) makes each applicant responsible for paying the entire amount of credit extended; and (3) grants GEMB a security interest in the goods purchased on the account as permitted by law.

- GEMB may contact me (1) using all contact information that I provide to GEMB, including without limitation, each phone number, email address, and/or text message address, (2) for all purposes, including collection purposes, (3) using methods where I may be charged for the communication (such as calling or sending a text message to my cellular phone) and (4) using automated equipment.

This application and the Agreement are governed by federal law and Utah law (to the extent that state law applies).

Federal law requires us to obtain, verify and record information that identifies you when you open an account. We will use your name, address, date of birth, and other information for this purpose.

Applicant Signature Date Joint Applicant Signature Date

Applicant's Primary ID (Type, Number, Issuing State) Exp. / Sec. ID (Credit Type and Issuer) Exp.

Account# Store# 534812

Contact Name

Store Fax # Store Phone #

Amount Requested \$

To find out about changes in the terms of the attached agreement, write to us at GEMB, P.O. Box 6160, Rapid City, SD 57709-6160 188-302-00 (01/07) BRP





0950 BRP

# SALES SLIP

GE MONEY BANK

ACCOUNT NUMBER 0101518 53481209510310109211  
DEALER NUMBER

Mark Macal  
CUSTOMER NAME

TOUSLEY MOTORSPORTS INC  
DEALER NAME

6514838296  
DEALER PHONE NUMBER

1400 EAST COUNTY RD, WHITE BEAR LA, MN 55110

DEALER ADDRESS

265 BRP 265 ATV 89@8.9 APR for 24 months with 1 deal  
CREDIT PLAN\* (DESCRIPTION)  
\*SEE REVERSE SIDE FOR OTHER THAN STANDARD PLAN TERMS.

016453 m n  
AUTH. CODE PROPERTY STATE

Description		Item Value
YEAR 2008 <input checked="" type="checkbox"/> NEW <input type="checkbox"/> USED		
MAKE bombardier		
MODEL OUTLANDER		
VIN # 3JB1E1K1C1J1118J0101010913		191991010
YEAR <input type="checkbox"/> NEW <input type="checkbox"/> USED		
MAKE		
MODEL		
VIN #		
LIST ACCESSORIES \$ 241.89		
MISC. EXT. WARE \$ 749.00		
OVER \$500		
		990189
SUB TOTAL		10189189
SALES TAX		1613166
FILING FEES		174510
OTHER FEES		138510
CASH DOWN PAYMENT		
NET TRADE-IN		
TOTAL DOWN PAYMENT		101010
AMOUNT TO BE FINANCED		109116155

10/16/2007  
DATE OF SALE

10/16/2007  
DATE OF DELIVERY

X Mark A Macal  
BUYER SIGNATURE

10-16-07  
DATE SIGNED

By signing, I certify that the Promotional Credit Plan and Amount to be Financed are correct and I grant GE Money Bank a purchase money security interest in the collateral financed. I agree to the terms and conditions of any applicable Special Payment Plan (on the reverse side) and the GE Money Bank Credit Card Agreement governing my Account.

STORE USE ONLY

Applicant's ID (Type and Number)

Expires

Name of Employee Obtaining Verification

Date

GE USE ONLY

Ticket Number

BRP Credit Card cannot be used for down payments.

200-526-00 (03/05) BRP

59250

EXHIBIT

B

10-17-07: 1:11PM:TOUSLEY MOTOR SPORTS

;651 555 5555

# 7 / 10

**SALES & SERVICE**  
HONDA AND YAMAHA MOTORCYCLES  
AND SCOOTERS, ARCTIC CAT, SKI-DOO  
AND YAMAHA SNOWMOBILE,  
SEA-DOO AND YAMAHA PERSONAL WATERCRAFT  
HONDA, YAMAHA, ARCTIC CAT AND BOMBARDIER ATV



Sellin' fun since '71

1400 EAST COUNTY ROAD E  
White Bear Lake, MN 55110 (651) 483-8296  
1-800-Tousley • FAX (651) 286-7108  
www.tousleymotorsports.com

CUSTOMER CODE

17255

DEAL #

36873

Stock #: BA80093A Date: 10/16/2007 Salesperson: OSOWSKI, JON  
Buyer Name: (Last) MACAL (First) MARK (Middle) A  
Co-Buyer Name: (Last) \_\_\_\_\_ (First) \_\_\_\_\_ (Middle) \_\_\_\_\_  
Address: 2326 BIRCH ST W City: ROSEMOUNT State: MN County: DAKOTA Zip: 55068  
Home Phone: (651)322-5569 Bus Phone: (651)755-3011 Buyer DOB: 09/30/1968 Co-Buyer DOB: \_\_\_\_\_  
Buyers Insurance Co.: \_\_\_\_\_ Policy No. or Agent Name @ Ph# \_\_\_\_\_  
Agency Name @ Ph# \_\_\_\_\_  
PLEASE ENTER MY ORDER FOR: New ☐ Used ☒ Demo ☐ Leinholder ☐ GE MONEY BANK Address: 332 MINNESOTA ST #610

TRADE-IN INFORMATION		UNIT PURCHASED	
EXTENDED WARRANTY YES <input type="checkbox"/> NO <input type="checkbox"/>			
YEAR	MAKE & MODEL	YEAR	MAKE & MODEL
SERIAL NO.	KEY NO.	SERIAL NUMBER	
ENGINE NO.	MILEAGE		
LICENSE NO.	EXP. DATE		
REGULAR PRICE	9849.00	ACCESSORIES	
TOUSLEY DISCOUNT	650.00	INVOICE 527361	241.89
BOTTOM-LINE PRICE	9199.00		
FREIGHT	N/A		
SET UP	25.00		
ENVIRONMENTAL FEE	241.89		
ACCESSORY TOTAL	9440.89		
TOTAL SELLING PRICE	N/A		
TRADE-IN ALLOWANCE	9440.89		
TAXABLE AMOUNT	613.66		
SALES TAX	38.50	ACCESSORY TOTAL	241.89
LICENSE	N/A		
TRANSFER	49.50		
DOCUMENT ADMINISTRATIVE FEE	749.00		
SERVICE CONTRACT	N/A		
THEFT PROTECTION	N/A		
GAP INSURANCE	N/A		
BALANCE OWING TO LEINHOLDER ON TRADE-IN	N/A		
TOTAL AMOUNT DUE	10916.55		
DEPOSIT AMOUNT	N/A		
TOTAL AMOUNT DUE ON DELIVERY	10916.55		

I have read the matter printed on the back hereof and agree to it as part of this order the same as if it were printed above my signature. I certify that I am 18 years of age, or older, and hereby acknowledge receipt of a copy of this order.

THE TERMS OF THIS CONTRACT OF SALE WERE AGREED UPON AND THE CONTRACT SIGNED IN THIS DEALERSHIP ON THE DATE NOTED AT THE TOP OF FORM.

**IMPORTANT: THIS IS A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS**

X Mark A Macal

Purchaser's Signature Applicant signature authorizes Tousley Motorsports to obtain credit and employment history.

Accepted Dealer's Signature

(This order is not binding on dealer until accepted by dealer in writing.)

OSOWSKI, JON

Salesman's Name

/ MGR Approval

**DECLINATION OF COVERAGE**

The Mechanical Repair Agreement has been explained to me in conjunction with my purchase.  
☐ I choose NOT to purchase the Mechanical Repair Agreement at this time with the full understanding that any repairs after the expiration of the original factory warranty period shall be completely at my expense.

Date

Customer Signature

**NEW VEHICLE OR USED VEHICLE WITH REMAINING FACTORY WARRANTY**

☒ I choose warranties on the products sold hereby are those of the manufacturer. As between this retail seller and buyer, the product is to be sold "AS IS" and the entire risk as to the quality and performance of the product is with the buyer. The seller expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. This disclaimer by this seller in no way affects the terms of the manufacturer's warranty. The buyer acknowledges being so informed prior to the sale.

10/16/2007

Date

Purchaser's Signature

**USED VEHICLE**

☐ No guarantee. No guarantee or warranty, express or implied, including any implied warranty of merchantability or fitness for a particular purpose. This vehicle is being sold on an "As is Basis with All Faults". The Buyer hereby acknowledges that the entire risk as to the quality and performance of this vehicle is with the Buyer. The Buyer assumes full responsibility for making inspections and repairs as may be necessary before putting this vehicle to use.

The above warranty information was explained to me prior to the sale.

Salesman

Buyer

10-17-07; 1:11PM; TOUSLEY MOTOR SPORTS

:651 555 5555

# 10/ 10

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

GE MONEY BANK  
332 MINNESOTA ST #610  
ST PAUL MN 55101

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR 1b. INDIVIDUAL'S LAST NAME

MACAL

FIRST NAME

MARK

MIDDLE NAME

ALAN

SUFFIX

1c. MAILING ADDRESS

2326 BIRCH ST W

CITY

ROSEMOUNT

STATE

MN

POSTAL CODE

55068

COUNTRY

USA

1d. SEE INSTRUCTIONS

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

1e. TYPE OF ORGANIZATION

1f. JURISDICTION OF ORGANIZATION

1g. ORGANIZATIONAL ID #, if any

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. SEE INSTRUCTIONS

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

GE MONEY BANK

OR 3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

332 MINNESOTA ST #610

CITY

ST PAUL

STATE

MN

POSTAL CODE

55101

COUNTRY

USA

4. This FINANCING STATEMENT covers the following collateral:

2008 BOMBARDIER

OUTLANDER 650

3JBKCU118J0000093

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAI/LOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING  
6. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2  
8. OPTIONAL FILER REFERENCE DATA

SECURED PARTY COPY

UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

EXHIBIT

C



### UNSWORN CERTIFICATE OF SERVICE

I, Julie A. Newton, employed by Brooks & Trinrud, P.C., declare under penalty of perjury that on the 5<sup>th</sup> day of November 2009, I mailed copies of the foregoing Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit and Proposed Order to each individual listed below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by first class mail with postage prepaid and depositing the same in a U.S. Post Office box in Rock Island, Illinois.

Mark and Karen Macal  
2326 Birch Street West  
Rosemount, MN 55068

Jasmine Z. Keller  
Bankruptcy Trustee  
12 S 6<sup>th</sup> Street, Suite 310  
Minneapolis, MN 55402

Curtis K. Walker  
Attorney for Debtors  
Curtis K. Walker Law Office  
4356 Nicollet Avenue S  
Minneapolis, MN 55409

Office of the U.S. Bankruptcy Trustee  
1015 US Courthouse  
300 S. 4<sup>th</sup> Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 5<sup>th</sup> day of November 2009.

/s/ Julie A. Newton

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

IN RE:

MARK ALAN MACAL and  
KAREN SUE MACAL,

No. 09-32944  
Chapter 13 Case

Debtors.

MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY

**A. Statement of Uncontested Facts**

GE Money Bank is a holder of a credit application and sales contract dated October 16, 2007, entered into by the debtor, Mark Macal. Said sales contract is secured by the 2008 Bombardier Outlander ATV, Identification Number 3JBKCKJ118J000093. The Debtors' Chapter 13 Plan fails to provide for payments to GE Money Bank for the 2008 Bombardier Outlander ATV. GE Money Bank has not received a payment since November 24, 2008. The collateral given as security is depreciating.

**B. Argument**

CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d) WHERE THE INTEREST OF THE PARTY IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on the debtors to prove adequate protection and/or absence of cause. GE Money Bank's interest in the property is not adequately protected where the Debtors have failed to make an offer of adequate protection as the delinquency and payoff amount increase.

**C. Conclusion**

Pursuant to 11 U.S.C. §362(d), GE Money Bank is not adequately protected due to the debtors' inability to make payments towards the original loan obligation, and relief from the automatic stay is appropriate in that the interests of GE Money Bank would be irreparably harmed by continuation of the stay.

Respectfully submitted,

/s/ Allison E. Walsh  
Minnesota Bar ID No. 0344904  
Brooks & Trinrud  
A Professional Corporation  
3725 Blackhawk Road, Suite 200  
Rock Island, IL 61201  
Telephone: (309) 786-4900  
Facsimile: (309) 786-4940  
**ATTORNEY FOR GE MONEY BANK**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

IN RE:

MARK ALAN MACAL and  
KAREN SUE MACAL,

No. 09-32944  
Chapter 13 Case

Debtors.

ORDER FOR RELIEF FROM AUTOMATIC STAY

The above-entitled matter is before the court upon the motion of secured creditor, GE Money Bank. Based on the file and the records herein:

IT IS HEREBY ORDERED that the Automatic Stay in the above-entitled bankruptcy proceeding is immediately vacated for all purposes as to GE Money Bank, which may proceed with recovery of the 2008 Bombardier Outlander ATV, Identification Number 3JBKCKJ118J000093, and pursuant to applicable state law thereafter may commence any action necessary to obtain complete possession thereof.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. Bankruptcy Judge